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Our File: 203-19-038 / GN

July 23, 2019

SENT VIA FAX: (403) 297-5884

Alberta Labour Relations Board
#308 1212 - 31st Avenue, N.E.
(Deerfoot Junction-Tower 3)
Calgary, Alberta T2E 7S8

Attention: Aaron Padnivalan, Manager of Settlement

Dear Sir:

RE: An unfair labour practice complaint brought by the United Food and Commercial Workers Canada Union, Local No. 401 affecting Sobeys Capital Incorporated (formerly "Sobeys West Inc.") – Safeway Operations

We are legal counsel for the United Food and Commercial Workers Canada Union, Local 401 (the "Union") with regard to this matter.

Please find enclosed an unfair labour practice complaint on behalf of the Union affecting Sobeys Capital Incorporated.

Sincerely,

CHIVERS CARPENTER

A handwritten signature in blue ink, appearing to read "Gordon Nekolaichuk", is written over the printed name.

Per: GORDON NEKOLAICHUK
(Email: gnekolaichuk@chiverslaw.com)

GN/vf

Enclosure

c.c.: UFCW, Local 401 (Via Email)
c.c.: Sobeys Capital Incorporated (formerly "Sobeys West Inc.") – Safeway Operations
Attn: Sean Naldrett, Director of Labour Relations (Via Fax: 403-730-3306)

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LABOUR RELATIONS BOARD

UNFAIR LABOUR PRACTICE COMPLAINT

Pursuant to Sections 12(2)(e) and 16(1) of the *Labour Relations Code* RSA 2000 c. L-1

I. COMPLAINANT:

United Food and Commercial Workers Canada Union, Local No. 401 (the “Union”, “UFCW Local 401” or “Local 401”)

MAILING ADDRESS:

#100, 46 Hopewell Way NE
Calgary, AB T3J 5H7

CONTACT PERSON:

Michael Hughes
Senior Communications &
Education Representative

PHONE: 403-291-1047

FAX: 403-250-3412

LEGAL COUNSEL:

Gordon Nikolaichuk
Chivers Carpenter Lawyers
Suite 101, 10426-81 Street, Suite 101
Edmonton, AB T6E 1X5

PHONE: 780-439-3611

FAX: 780-439-8543

II. NAME OF EMPLOYER AGAINST WHOM THE COMPLAINT IS BEING MADE (RESPONDENT):

Sobeys Capital Incorporated (formerly “Sobeys West Inc.”) – **Safeway Operations** (the “Employer” or “Sobeys”)

MAILING ADDRESS:

1020 64th Avenue NE
Calgary, AB T2E 7V8

CONTACT PERSON:

Sean Naldrett
Director of Labour Relations
Sobeys Capital Incorporated
1020 - 64 Avenue NE
Calgary, AB T2E 7V8

PHONE: 204-430-9077

FAX: 403-730-3306

III. SECTIONS AND SUB-SECTIONS WHICH ARE ALLEGED TO HAVE BEEN VIOLATED:

The Union alleges that the Employer has violated sections 60(1)(a) and (b) (3), section 147(3), and section 148(1)(a)(ii) of the *Code*.

IV. PARTICULARS

1. UFCW Local 401 is the certified bargaining agent for almost all Safeway store employees in the province. There are Safeway stores in: Calgary, Banff, Brooks, Camrose, Canmore, Edmonton, Fort McMurray, Grande Prairie, Hinton, Lethbridge, Lloydminster, Medicine Hat, Red Deer and Wetaskiwin. While there are separate certificates for each city, all employees in the province are under one of three collective agreements.
2. Local 401 and the Employer are parties to a collective agreement with a term from March 23, 2014 to March 18, 2017, which applies to all employees, excluding those working in the bakery, meat, delicatessen and fish departments, (the "Retail Collective Agreement"). Local 401 and the Employer are also parties to a collective agreement with a term from March 23, 2014 to March 18, 2017, which applies to employees working in the meat, delicatessen and fish departments in Sothern Alberta (the "Meat Collective Agreement – South"). In Calgary, the bakery production employees are in a different bargaining unit and are represented by a different union.
3. Prior to October 1, 2017, employees in the meat, delicatessen and fish departments in some Safeway stores were represented by UFCW Local 1118; however, as a result of merger between Local 401 and Local 1118, all those members became part of Local 401. Local 401 (formerly Local 1118) is party to a collective agreement with the Employer for a term from March 23, 2014 to March 18, 2017 (the "Meat Collective Agreement – North").
4. There are approximately 8000 employees in the Union's bargaining units.
5. In Calgary and the surrounding area, there are 33 Safeway stores. One of which is Southland Crossing (8846). There is another store called Southcentre (8841).
6. On January 13, 2017, Local 401 and Local 1118 served Notice to Bargain on the Employer. Local 1118 reminded the Employer that the statutory freeze was now in effect. Local 401 and Local 1118 indicated that they wished to bargain concurrently with the Employer. Thomas Hesse, Local 401 Executive Director of Labour Relations, was to be the bargaining spokesperson for Local 401.
7. On February 1 and 3, 2017, Sean Naldrett, Sr. Director-Labour Relations, responded to the Notices on behalf of the Employer and advised they would not bargain with Local 401 and Local 1118 together.

8. The parties agreed that, given some of the challenges facing Sobeys arising out of the purchase of Safeway, neither party was in a rush to commence collective bargaining.
9. On or about December 13, 2017, the Employer announced to the public and employees that it wanted to convert up to 25% of its 255 Safeway and Sobeys stores in Western Canada to a discount banner called FreshCo. Unionized Safeway stores in Western Canada would be converted subject to the outcomes of collective bargaining in each of BC, Alberta, Saskatchewan, and Manitoba.
10. On or about January 8, 2018, Ryan Shannon replaced Mr. Naldrett as Labour Relations Director responsible for Alberta.
11. On January 29, 2018, Mr. Hesse wrote to Mr. Shannon about bargaining issues and, specifically, asked for “*full particulars of any and all imagined, contemplated, considered, or planned changes to the business*”. Mr. Hesse also made a detailed request for information related to the FreshCo stores in Alberta. Mr. Hesse advised the Employer of the Union’s serious concerns about the manner of the FreshCo announcement. That, by making the announcement and providing virtually no details about it to the Union, it undermined the Union and created fear and anxiety amongst employees.
12. On February 5, 2018, Mr. Shannon responded, advising that the Employer was aware of its obligation to provide the Union with information, but that any plans had not yet reached a “*stage that they are likely to be implemented*”. Mr. Shannon gave an assurance that the Employer would have appropriate discussions with the Union and provide pertinent information when necessary.
13. On February 14, 2018, Mr. Hesse again wrote to Mr. Shannon asking the Employer to disclose any contemplated changes. Mr. Hesse pointed out to Mr. Shannon that there was a difference between solicited and non-solicited disclosure. Mr. Hesse also pointed out the disingenuousness of Mr. Shannon’s response when, the day after his letter, another representative of the Employer wrote the Union asking them to agree to provisions in respect to a stand-alone pharmacy store, something which would be new under the Retail Collective Agreement and had not been previously bargained.
14. On September 24, 2018, the Union wrote to the Employer requesting to start meeting for collective bargaining. The Union also advised of the merger of Local 401 and Local 1118 and again suggested bargaining for all three agreements occur at the same table.
15. On October 5, 2018, Morgyn Ahrens, Labour Relations Manager, advised that the Employer would bargain the Local 401 and Local 1118 agreements concurrently at the same table. Ms. Ahrens advised that she had written to Mr. Hesse on July 13, 2018 to advise the same, but the fax transmission had failed.
16. On Thursday, October 18, 2018, Sobeys advised that David McDonald, a lawyer with the firm Fasken, would be taking over as the Employer’s spokesperson for bargaining.

17. On December 19, 2018, the Union and Employer's lead negotiators met to discuss a bargaining schedule and protocol. During this meeting, the Union reminded the Employer of its disclosure requests with respect to whether any changes were contemplated to the bargaining unit.
18. The parties were scheduled to meet on January 22, 2019 to exchange proposals, however, a member of Sobeys' bargaining team unexpectedly became ill and the meeting was cancelled. The parties rescheduled their meeting to exchange proposals for March 4, 2019.
19. On March 4, 2019, the parties met and gave each other an overview presentation reflecting their views of the business and hopes for bargaining and exchanged proposals.
20. Mr. Ken Woo, Sobeys' VP of Alberta Operations, gave an overview of the business and some of the Employer's future goals. Towards the end of the meeting Mr. Hesse emphasized the importance of disclosure, such as knowing what stores were profitable and which were not.
21. The parties also met on March 5, 6 and 7, 2019.
22. On March 16, 2019, the Union, in an email on behalf of Mr. Hesse to Mr. McDonald, again asked the Employer to "*disclose planned, and contemplated business changes.*"
23. The parties met again on March 19-21, 2019 for bargaining.
24. During bargaining on March 19, 2019, a Union bargaining committee member specifically asked Mr. Woo if the Employer had any plans to close or sell a Safeway store. Mr. Woo responded that the Employer did not have any plans to close a store. He went on to say that the Employer does consider store closures on an ongoing basis, and a year or two before a store's lease is up, the Employer looks at how the store is performing, what the competitors are in area and makes a decision.
25. The parties met again for collective bargaining from March 27-29, 2019.
26. On May 13, 2019, shortly after the close of business, Ricardo de Menezes, Local 401 Southern Director, received a call from Mr. Naldrett advising that he had an important announcement; Theresa McLaren, Local 401 Secretary Treasurer, was merged into the call. Mr. Naldrett then told them that Sobeys was closing the Southcentre store because the Employer felt the store was "underperforming." The lease for the store was coming up and they had decided to not renew the lease and close the store. Mr. Naldrett advised they would be telling employees at 9:30am the next morning. Ms. McLaren indicated that they would be sending union representatives to the store after the announcement.
27. The next morning, Ben Salonius, Union Labour Relations Officer, and Stephen Reed, Union Labour Relations Officer, arrived at the Southcentre store, but there had been no announcement. They called Mr. de Menezes, at approximately 10:15 a.m., to ask what was going on. Mr. de Menezes then called Mr. Naldrett, who advised it was the Southland Crossing store ("Southland") that was closing. While Mr. Reed and Mr. Salonius were

waiting to hear back from Mr. de Menezes, a member approached them and told they were at the wrong store. Mr. de Menezes confirmed this, and Mr. Reed and Mr. Salonijs then made their way to the Southland store.

28. At the Southland store, employees were upset about the announcement. The Employer was providing employees with confusing letters throughout the day and advising them in meetings, and by letter that employees could either accept permanent layoff, terminate their employment, or agree to transfer to another Safeway location or another position in the bargaining unit. Transfers could be to any location in Calgary and the surrounding area, such as Airdrie or Okotoks. Employees were not advised of which possible stores they could be moved to. Further, the Employer was only giving them until May 20, 2019 to make a decision. Mr. Salonijs expressed to Jody Anderson, Sobeys' HR Business Partner, that the Union was concerned about the time period employees were being given to make a decision. Mr. Salonijs also asked when employees would be advised of their transfer store. Ms. Anderson replied that employees would not be told where they were going until two weeks prior to the store closure on August 31, 2019.
29. Following the closure announcement, members had a number of questions for the Union, but given the Union had been provided with virtually no notice and the Employer had not discussed it with the Union, the Union was unable to provide any information. Further, the Union had not had a chance to review with the Employer what information they would be providing to employees, nor discuss with the Employer ways in which the impact of the closure could have been lessened on employees. This lack of information from the Employer had put the Union in an untenable position, which was further aggravated by the fact that the letters the Employer was handing out to employees noted that the Union was "cc'd", however the Union never received those letters until May 27, 2019; over two weeks later, and then it was only some of the letters, as the Employer only provided the ones employees had returned after making an election. Employees were confused by the Union's inability to respond on the content of the letters when it said they had been provided a copy.
30. In addition to providing no information to the Union, the Employer also sought to discourage employees from providing information to the Union. On or about May 23, 2019, an employee did not want to show a Union Labour Relations Officer their letter because, they said, they had been told by the Employer to not share it with anybody.
31. Since 2017, the Employer has communicated with Alberta Safeway employees publicly through an email list and website called Safeway Talks. On May 14, 2019, the Employer sent an email directed at Alberta Safeway employees in the bargaining unit advising of the Southland store closing. They had also, a few days before, sent an email and made a post on May 10, 2019, where they criticized the Union for advocating for employees and stating that the Union was making collective bargaining "*more challenging than needed*" and went on to say "*We hope the Union will join us with a focused approach at the table*".
32. There were approximately 75 bargaining unit employees at the Southland store. The Employer announced that members with under two (2) years seniority would be permanently laid off. Members with more than two (2) years seniority would have the ability to be transferred to another location. There was confusion, as the Employer said that

those with under two (2) years seniority as of the announcement would be laid off, even though they would be continuing to work and accrue seniority until the store closed. The Employer later admitted this was incorrect. However, it maintained that those with less than (2) years seniority would be laid off.

33. On May 17, 2019, Sherry Johnson, Senior Advisor Labour Relations, emailed Mr. de Menezes and the Union representative for the Bakery Production Unit, a proposed timeline with respect to notification of employees at the Southland store. Also enclosed were some template letters for employees advising of their options. These template letters referenced a store closure that occurred in 2016. The Employer did not provide the actual letters they had provided to employees on May 14, 2019.
34. On May 22, 2019, the parties met for collective bargaining. Mr. Hesse advised the Employer that it had failed to make a timely and required disclosure of the Southland store closing. Mr. Hesse pointed out that the Union had previously asked about changes and that Mr. Shannon has replied that the Employer would advise the Union of changes when they were “likely” to be implemented. When the Employer informed the Union of the Southland store closing, the night before the announcement, it was far past the “likely” stage! Mr. Hesse conveyed how difficult and frightening a store closure is for employees and the Union, and by not discussing it with the Union, the Employer was using it as a weapon in collective bargaining to intimidate employees and discredit the Union.
35. Mr. Hesse also asked when the decision to close the store was made. After caucusing, the Employer advised the decision was made on May 4, 2019. The Employer did not provide further details about the decision, despite numerous questions from Mr. Hesse.
36. The parties met again in collective bargaining on May 23, 2019, and the Employer gave an overview of how staff transferring would work on store closure. Mr. Hesse voiced concern over the letters that were provided to employees. He conveyed that employees needed to time to make decisions and should be afforded Union representation.
37. On May 25, 2019, the Union updated its membership about the Southland closure, pointing out the Employer’s lack of disclosure and the Union’s persistence in trying to get appropriate information from the Employer and in advocating for employees.
38. On May 27, 2019, Ms. Johnson sent Mr. de Menezes and Mr. Salenius, a copy of the “Wave 2” letter template variations that the Employer intended to send to employees. These letters would be going to both Southland employees and other employees in the bargaining unit who may be affected by the Southland closure. For example, some employees would be advised on how they would be reclassified. Where others were given an election to bump. Ms. Johnson also provided employees’ responses to the “Wave 1” letter, that was distributed on May 14, 2019, asking employees to check whether they wanted to permanently laid-off or transferred.
39. On May 29, 2019, Mr. de Menezes and Mr. Salenius met with Ms. Johnson and Paul van Steenberg, Sobeys Labour Relations Officer, to discuss the closure. Mr. van Steenberg advised that there would be hiring freeze in Calgary in order to try and accommodate

Southland employees. At the meeting, the Union made clear that they wanted to be a part of any meeting the Employer was having with employees related to the closure.

40. On May 30, 2019, Michael Hughes, Union Senior Communications & Education Representative, and Joe Attwood, met with Mr. van Steenbergen, Mr. Attwood asked Mr. van Steenbergen questions about what the Employer considered with respect to trying to lessen or mitigate the impact of the closure on employees, for example phased in retirement or how an outstanding grievance with respect to Full Time Meat employees would be impacted. Mr. van Steenbergen advised the Employer had not considered these things. He again advised that the Employer had imposed a hiring freeze in the Calgary area in an attempt to find positions for employees from the Southland store.
41. However, despite Mr. van Steenbergen's assurance about a hiring freeze the Employer has continued to hire new employees in Calgary and has not provided the Union or employees with any notices of vacancies. Further, when Mr. Salenius has asked about vacancies Mr. van Steenbergen advised that they would not transfer employees as they needed them at the Southland store. However, the Employer has refused to offer or negotiate any additional terms to address closure issues.
42. On May 31, 2019, Ms. Johnson sent Mr. de Menezes and Mr. Salenius an email addressing some of the points they had raised about the Employer's letters to employees on the closure.
43. On June 5, 2019, April Albrecht, Union Labour Relations Officer, raised the issue of the Union being at all meetings where the Employer was talking to employees about the closure with Janos Kocsis, Sobeys Human Resources Representative, but did not receive a response. On June 6, 2019, Mr. Salenius again made clear to Mr. van Steenbergen that the Union wanted to attend meetings the Employer was having with employees about the consequences of the closure and employees' options. Mr. Salenius later questioned Mr. van Steenbergen about some recent meetings where the Union was not included; Mr. van Steenbergen responded that he did not think the Union would be able to coordinate having a representative attend. Mr. Salenius pointed out that it was not for the Employer to decide that.
44. On June 5, 2019, Mr. Hesse wrote a detailed letter to Mr. van Steenbergen explaining the Union's concerns with the Employer's handling of the Southland store closing and the Employer's interpretation of the Collective Agreement. Mr. Hesse again expressed concern over the lack of disclosure provided to the Union about the closure and the affect that has on employees and the Union. He reiterated the Union's request for disclosure. He made a detailed request for particulars around the Southland store closing, both the decision to close the store, and about various consequences resulting from that decision, and again asked what other stores may be closed or converted to another banner.
45. On June 7, 2019, the Union wrote to Southland employees to explain what had occurred so far with respect to the Union's knowledge of the closure and what steps employees could take to try and protect their rights.

46. On June 10, 2019, Mr. Salenius wrote to Mr. van Steenberg about the ongoing failure of the Employer to include the Union when speaking to employees. Despite Mr. Naldrett's statement, during bargaining on May 23, 2019, that the Employer was agreeable to including the Union in meetings with employees. The Employer had provided "Wave 2" letters to employees without providing them to the Union until after the fact. The Employer also met with employees at the Southland store about their options, and other employees in the wider Calgary bargaining unit, who may be getting bumped and as a result have to make decisions about their employment, without the Union. Mr. Salenius also pointed out that despite Mr. van Steenberg's assurance that there was a hiring freeze, hiring was still occurring.
47. It was not until June 11, 2019 that Ms. Johnson sent a complete package of the Wave 1 and Wave 2 letters to the Union. Mr. Salenius responded again raising concerns about the Employer meeting with employees without union representation. He also asked for extensions of time for employees to respond to the letters, and pointed out that, while the Employer had said there was a hiring freeze, there was not.
48. On June 14, 2019, Mr. van Steenberg responded to Mr. Hesse's June 5, 2019 letter. Mr. van Steenberg refused to answer the questions asking about particulars of the decision to close the Southland store but provided some answers to other questions regarding the closure.
49. Also, on June 14, 2019, Mr. McDonald responded to Mr. Hesse's June 5, 2019 letter advising that the Employer would be willing to share financial data with the Union about the Southland store and other Alberta stores, but only on condition a confidentiality agreement be signed. However, a confidentiality agreement would prevent the Union from disclosing relevant information to their members.
50. The parties again met for collective bargaining from June 20-21, 2019. In the context of the parties' discussions around the Southland store closure, the Union invited the Employer to be transparent about its plans for all Alberta Safeway stores, both around store closures as well as with respect to its plans to introduce its discount FreshCo banner to Alberta. The Union resisted further suggestions from the Employer that it sign a confidentiality agreement as it would undermine the Union's credibility with its members. The Union has embarked on a path of transparency and openness with its members from the outset of bargaining.
51. During a lengthy presentation on June 20, 2019, the Employer finally at the Union's suggestion, gave a presentation on FreshCo. In the presentation the Employer attempted to persuade the Union of the value of its FreshCo banner, including information detailing the Employer's market position vis-à-vis its competitors. The presentation was led by Rob Adams, Sobeys' Senior VP of Strategic Operations – Discount. The Union again asked the Employer for any contemplated or considered plans it had for conversions and/or closures of Alberta Safeway stores affecting members of the bargaining unit.
52. During this exchange, Mr. Adams told the Union that the Employer currently has a list of stores targeted for conversion or closure but that he would not be providing that

information to the Union. The Employer refuses to provide the Union with the number or the locations where conversions will occur. When asked about plans to introduce the Employer's "Chalo" banner, a sub-brand of the broader FreshCo banner, Mr. Adams indicated that the Employer is considering two locations in Alberta. Again, when asked, he refused to say which two stores the Employer considers candidates for its specific FreshCo Chalo brand.

53. On June 21, 2019, before the parties met to commence bargaining, Mr. McDonald and Andrew Follwell, Sobeys' Vice President of Labour Relations for Canada, advised the Union bargaining committee that the Employer would be changing their approach to bargaining given the Union's position that it was not prepared to agree to FreshCo Conversion language. The Union had advised the Employer the day before that they would not be agreeing to FreshCo because they had not been provided with sufficient information about the proposed conversion or convinced of its value. Mr. Follwell then told the Union's bargaining committee that "FreshCo is coming" to Alberta and that Safeway employees either agreed to conversion or stores would be closed. The Employer again did not advise what stores were affected by this threat.
54. Later that day, Mr. Hughes emailed Mr. Naldrett expressing dismay over the Employer's action in ending bargaining. Mr. Hughes pointed out that the Union had said they were not prepared to bargain the FreshCo conversion at that time, as the Employer had not persuaded the Union of its value. The Employer ended bargaining without providing further information on the conversion. Mr. Hughes asked that the Employer provide the Union with a copy of the FreshCo presentation given on June 20, 2019.
55. On July 3, 2019, the Employer put out a Safeway Talks to employees misrepresenting the most recent round of bargaining. The Employer stated that the bargaining process was slow and blamed the Union: "*Unfortunately, UFCW Local 401 has not shown any interest in gaining momentum and negotiations did not progress*". The Employer also told employees that "*The Union is focused on dividing us when we need to work together*".
56. On July 8, 2019, Mr. Woo sent a letter to all employees' homes advising of his retirement. In this letter, he implies that bargaining is not going well: "*It is my genuine hope that bargaining does not distract us from the momentum we're gaining*". He also takes the opportunity to promote the FreshCo conversion. He acknowledges that such a change could be difficult for employees.
57. The Parties met again for bargaining on July 16-18, 2019. An important topic of discussion during these days was the Union's proposals around the Union Bulletin Board. The Union explained that it should be able to communicate Union Information to its' members and suggested language to allow this and in a new format. The Employer sought to restrict the content of the Union's communications. The Union explained that the Employer's position was particularly objectionable given the Employer's failure to make a timely disclosure with respect to the Southland closure, the refusal to provide details on FreshCo, and the Employer's ongoing criticism of the Union in the Employer's communications. The Union pointed out that restricting the content of the Union's communications to members in those

circumstances evidences an anti-union animus. The Employer has previously made its anti-union views known and continues to do so.

58. On July 17, 2019, the Union updated its members about bargaining. It expressed its frustration with the Employer's refusal to provide details on FreshCo, although it pointed out it remained willing to discuss the matter with the Employer, but the Union and employees needed details of what was planned. The Employer then posted its own communication explaining to employees that FreshCo conversions are needed to stay competitive and secure a strong future for Safeway. The Employer stated, "*In bargaining, we are committed to creating conditions that will provide stable jobs and allow our Safeway stores to succeed*". The implication being that the opposite will occur if FreshCo is not agreed to. The letter ended inviting employees to reach out to their Store Manager. In at least one store, the Employer put up this posting directly beside the Union Bulletin Board.
59. The Employer put a further Safeway Talks out on July 22, 2019, expressing frustration with bargaining and blaming the Union, and suggesting the Union is not doing what is best for the members: "*Yet time and time again, the Union has been distracted from proposals that impact your lives and the lives of teammates*". The Employer then tells employees of the Employer's view of the necessity of FreshCo and tells employees "*...some of our Safeway stores can't compete strictly based on the communities they're operating in. We need to make a change now to avoid permanently closing underperforming Safeway stores in the future*". This communication both disparages the Union and threatens the livelihood of employees.

V. SUMMARY AND BASIS OF THE APPLICATION

60. The Employer, by failing to make a timely disclose that the Southland store was closing, has violated sections 60(1)(3) of the *Code*. The Union had specifically asked the Employer if such changes were contemplated and the Employer did not make any disclosure and further, specifically, led the Union to believe there were no closures planned.
61. By failing to disclose this information and by failing to provide the Union with any reasonable notice of the closure and by announcing the closure directly to employees, the Employer has interfered with the representation of employees by a trade union, contrary to section 148(1)(a)(ii) of the *Code*. Not only did the Employer not advise the Union of the closure until the night before they told employees, they did not provide the Union with accurate information. The failure to provide the Union with relevant information related to the closure is an ongoing violation of the *Code*.
62. Had the Employer made the proper disclosure, the Union could have been prepared to answer member questions and provide them with information about what was occurring and how best to protect themselves. Further, the Employer should have made a timely disclosure to the Union to allow it to discuss and bargain issues around the closure with the Employer.

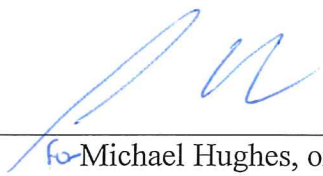
63. The Employer, by not involving the Union, in speaking with employees about their options and by not discussing the way in which the closure is affecting employees or bargaining those issues, is instead directly bargaining issues around the closure with employees and interfering with the Union's representation of employees. This is breach of s. 60(1)(3) and s. 148(1)(a)(ii) of the *Code*.
64. Furthermore, the closure of the store during a statutory freeze, in the above context, and the resulting changes is a breach of section 147(3) of the *Code*.
65. The Employer's failure to disclose what stores are targeted for FreshoCo conversion or for closure and the failure to provide detailed information supporting the decision to convert or close a store is also a breach of s. 60(1)(3) and 148(1)(a)(ii) of the *Code*. Store conversion or closure are major changes to the Union's bargaining units and the Union needs to understand the scope of what may occur in order to properly bargain those issues.
66. The Employer's offer to disclose financial information about the Southland closure and other underperforming stores only on condition of a confidentially agreement is also a breach of s. 60(1)(3) and 148(1)(a)(ii) of the *Code*. The Employer is preventing the Union from being informed in bargaining by requiring them to keep information from the membership. The Union is accountable to its members and must explain positions taken in bargaining.
67. The Employer's communications to employees are also a breach of s. 60(1)(3) and 148(1)(a)(ii) of the *Code*. They are appealing directly to employees about matters the Union has spoken on, at the same time they are disparaging the Union, all while failing to make proper disclosures to the Union and making threats about employees job security.

VI. SPECIFIC REMEDIES REQUESTED:

68. On the basis of the above, the Union seeks the following remedies:
 - a) A declaration that the Employer has violated sections 60(1)(a) and (b)(3), section 147(3) and section 148(1)(a)(ii) of the *Code* and any other sections of the *Code* that the evidence discloses have been breached and the Board allows to be raised;
 - b) An order that the Employer cease and desist in violating sections 60(1)(a) and (b)(3), section 147(3) and section 148(1)(a)(ii) of the *Code*;
 - c) An order directing the Employer to provide the Union with the lease expiry dates for all stores with a lease expiring in the next two years;
 - d) An order directing the Employer provide the Union with the list of stores targeted for conversion or closure and the financial data supporting those decisions;
 - e) An order directing the Employer to meet and make every reasonable effort to enter into a collective agreement;

- f) An order directing the Employer to compensate all affected employees in respect to any lost wages or benefits flowing from the Employer's breaches of the *Code* and to otherwise make employees whole in every respect;
- g) An order directing the Employer to make the Union whole for any losses suffered as a result of the Employer's breaches of the *Code*;
- h) An order directing the Employer to pay general damages to the Union and to affected employees relating to the Employer's breaches of the *Code*;
- i) An order that the Employer post a notice to employees at all worksites in the bargaining unit setting out the Board's orders in this matter;
- j) Any of the above remedies on an interim basis;
- k) Costs of the within application; and
- l) Any other order or direction that is appropriate in the circumstances.

DATED at the City of Edmonton, in the Province of Alberta, this 23rd day of July 2019.


for Michael Hughes, on behalf of
UFCW Local 401